

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-389-C - ORDER NO. 98-207
MARCH 18, 1998

IN RE: Application of Atlas Equity, Inc. DBA)	ORDER
Performance Telecom for a Certificate of)	APPROVING
Public Convenience and Necessity to Operate)	CERTIFICATE
as a Reseller of Telecommunications Services)	
within the State of South Carolina.)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Atlas Equity, Inc. d/b/a Performance Telecom ("Performance" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of intrastate interexchange telecommunications services within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1997) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Performance to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Performance's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Performance complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to

Intervene or letters of protest were received by the Commission regarding Performance's Application.

A hearing was commenced on February 25, 1998, at 11:30 a.m., in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. Performance was not represented by counsel. Florence P. Belser, Staff Counsel, represented the Commission Staff.

William D. Savage, Vice President and Chief Operations Officer of Performance, appeared and offered testimony in support of Performance's Application. The record reveals that Performance is a corporation organized under the laws of the State of California and is authorized to transact business in South Carolina as a foreign corporation by the South Carolina Secretary of State. According to Mr. Savage, Performance proposes to offer long distance services using resold transmission services of underlying carriers which are duly certified by the Commission. Mr. Savage explained the Company's request for authority to provide interexchange telecommunications services in South Carolina as a reseller. The record reveals the Company's services, operations, and marketing procedures.

Mr. Savage also explained that Performance possesses the technical, financial and managerial abilities to provide its services in South Carolina. Finally, Mr. Savage testified that the Company would operate in accordance with the Commission rules, regulations, guidelines, and Commission Orders and agreed to make revisions to the proposed tariff as suggested by the Commission Staff.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Performance is organized as a corporation under the laws of the State of California and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. Performance operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.
3. Performance has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Performance to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.
2. The Commission adopts a rate design for Performance for its resale services which includes only maximum rate levels for each tariff charge. A rate structure

incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Performance shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. Performance shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1997).

4. If it has not already done so by the date of issuance of this Order, Performance shall file its revised maximum tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. Performance is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Performance shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Performance changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, Performance shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

9. Performance shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

10. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the

name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

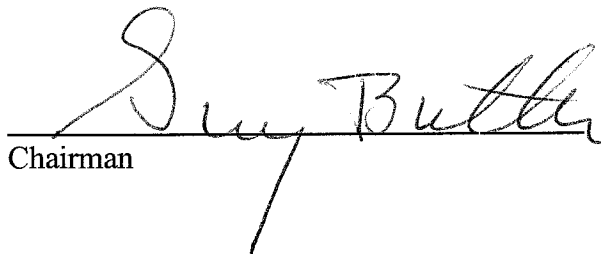
Performance shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order.

Attachment B shall be utilized for the provision of this information to the Commission.

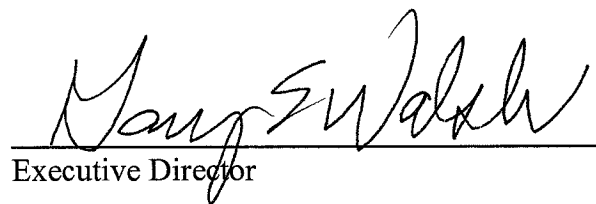
Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR
12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF
CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING
_____.
- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT
OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS
METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3
ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

DOCKET NO. 97-389-C - ORDER NO. 98-207
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ATTACHMENT B

**INFORMATION OF THE AUTHORIZED UTILITY
REPRESENTATIVES FOR INTEREXCHANGE, LOCAL
AND AOS COMPANIES**

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and maintain with the Commission
the name, title, address, and telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by Signature

If you have any questions, contact the Consumer Services Department at 803-737-5230